Supreme Court of the United States

OCTOBER TERM, 1959

No. 19

UNITED MINE WORKERS OF AMERICA, and UNITED MINE WORKERS OF AMERICA, DISTRICT 28, *Petitioners*,

v.

BENEDICT COAL CORPORATION, *Respondent*.

On Writ of Certiorari to the United States Court of Appeals For the Sixth Circuit

PETITIONERS' BRIEF

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PETITIONERS' BRIEF

I. OPINION BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit[1] is reported in 259 F. 2d 346, and it appears in the printed record at pp. 761-779.

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[1] Herein the United States Court of Appeals for the Sixth Circuit is referred to as either the "Court of Appeals" or "Sixth Circuit".

The opinion dealt with the Sixth Circuit's cases No. 13055, styled *John L. Lewis et al.* v. *Benedict Coal Corporation* (which is now pending in this Court as Case No. 18), and No. 13056, styled *United Mine Workers of America, and United Mine Workers of America, District 28* v. *Benedict Coal Corporation* (now pending in this Court as Case No. 19), both Cases No. 18 and 19 having reference to the October Term, 1959.

An opinion of the district court,[2] found in the printed record at pp. 68a-71a, overruled a motion for summary judgment by petitioners in Case No. 18.

II. JURISDICTION

The Court of Appeals' judgment in this case was entered September 26, 1958 (R. 761).[3] Petition for writ of certiorari was filed in this Court on December 5, 1958, by United Mine Workers of America and United Mine Workers of America, District 28.[4] Jurisdiction of this Court is invoked under 28 USCA, Sections 1254(1) and 2101(e). This Court granted certiorari on February 24, 1959 (R. 780; —— U. S. ——, 3 L. ed. 2d 570).

III. STATUTES INVOLVED

The pertinent statutory provisons involved are Sections 7, 13 and 301 of the Labor Management Relations Act, 1947[5] (29 USCA, Sections 157, 163 and 185). The pertinent portions of the Act are set forth in Appendix I to this brief.

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[2] This reference is to the United States District Court for the Eastern District of Tennessee, Northeastern Division, which will be referred to herein as the "trial court" or "district court".

[3] The abbreviation "R." herein refers to the printed record.

[4] Herein, United Mine Workers of America will be called "UMW", and United Mine Workers of America, District 28 will be referred to as either "District 28" or "District". Collectively, they are referred to herein as the "Unions".

[5] Herein called the "Act".

IV. QUESTION PRESENTED

Where (1) the settlement of disputes section of collective bargaining agreements antedating 1950 provided that Mine Workers shall not engage in a work stoppage pending settlement of disputes under grievance machinery procedures and such agreements contained other "no strike" clauses, and (2) under the Labor Management Relations Act, 1947, the right to strike became a bargainable subject, and (3) in 1950 UMW and coal operators signatories to the National Bituminous Coal Wage Agreement of 1950, deleted such clauses therefrom and expressly covenanted that the "no strike" clauses in prior agreements were rescinded and made null and void, and (4) signatories to such 1950 Agreement covenanted that stoppages, as well as disputes, shall be settled exclusively under grievance machinery procedures set forth in such contract, is a stoppage of work pending settlement of a dispute cognizable under the grievance machinery procedures proscribed thereby and a violation of the 1950 Agreement so as to subject UMW and District 28 to damage actions under the Act's § 301?

V. STATEMENT OF THE CASE

1. THE TRIAL PROCEEDINGS AND THE SIXTH CIRCUIT'S JUDGMENT

Benedict Coal Corporation (herein called "Benedict"), a coal producer in Lee County, Virginia, as well as UMW and District 28, were signatories to the National Bituminous Coal Wage Agreement of 1950 and to the amendments thereto in 1951 and 1952.[6]

[6] The National Bituminous Coal Wage Agreement of 1950 (Ex. 2, R. 88a, 154a) will be called the "1950 Agreement". That Agreement as amended January 18, 1951 (Ex. 10, R. 118a, 241a), will be called the "1951 Agreement", and the 1950 Agreement as amended September 29, 1952 (Ex. 3, R. 108a, 154a-155a), the "1952 Agreement".

These Agreements, effective during the period March 5, 1950 - June, 1953, did not contain an express no-strike clause or other express waiver or limitation upon the right to strike. They did contain provisions for grievance machinery procedures for the settlement of disputes.[7]

In the 1950 Agreement, the contracting parties had created the "United Mine Workers of America Welfare and Retirement Fund" (herein called "Fund"); and the several Agreements provided that signatory coal operators, who included Benedict, would pay into that Fund a designated sum "on each ton of coal produced for use or for sale" (R. 94a).

Trustees of the Fund,[8] by complaint filed in the trial court, sought judgment against Benedict for unpaid royalties on coal mined by Benedict which were due and owing under the 1950, 1951 and 1952 Agreements. Denying liability to the Trustees, Benedict asserted inter alia that UMW had breached its agreement with Benedict; and pursuant to the Act's Section 301 (29 USCA 185), as cross-complainant, Benedict filed its cross-claim[9] for compensatory damages (R. 64a) against UMW and District 28 upon allegations, denied

[7] See *post*, p. 11, fn. 22.

[8] The Trustees' action was styled John L. Lewis, Charles A. Owen and Josephine Roche, as Trustees of the United Mine Workers of America Welfare and Retirement Fund v. Benedict Coal Corporation in the trial court. Judgment rendered therein was appealed by the Trustees and was docketed as No. 13,055 in the Sixth Circuit. Substitution of Henry G. Schmidt as successor Trustee to Charles A. Owen was granted by the Sixth Circuit, October 16, 1958 (R. 779).

[9] The original cross-claim is found beginning at page 25a of the printed record and amendments thereto begin at pages 37a, 41a, and 61a thereof.

by UMW and District 28,[10] that the Unions had breached the Agreements effective during 1950-53 by calling "a number of unlawful strikes" at Benedict mines during that period, during which and previous to such strikes Union agents refused to arbitrate matters in dispute and to follow the contractual provisons for adjustment of disputes. UMW and District 28 insisted that the several strikes were not in violation of the Agreements,[11] a position rejected by the trial court (R. 86a, 729a).

Upon jury trial, a verdict of $81,017.68 was rendered against UMW and District 28 in Benedict's favor (R. 74a). A verdict against Benedict in favor of the Trustees was rendered for $76,504.21[12] (R. 74a). The trial court entered judgment in said amount in Benedict's favor against both UMW and District 28, "for which execution may issue"; and ordered that said sum be paid into the Court's registry, with directions to the clerk that of said amount the sum of $76,504.26 be paid to the Trustees and that the difference be paid to Benedict (R. 76a). One-half of costs were ordered to be paid by Benedict, the other

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[10] See Answer and Amended Answer of UMW and District 28 (R. 46a, 72a). The Unions, denying the material allegations of the cross-complaint, alleged upon advice that the strikes had been "brought about largely, if not entirely, because of the arbitrary and unreasonable conduct" of Benedict and that Benedict had breached the bargaining contracts and disregarded its obligations to its employees by failing to pay, or being grossly delinquent in the payment of vacation pay, in payments to the Fund, and in other ways (R. 46a-53a, 72a).

[11] Such UMW and District 28 assertions appear in exceptions to the jury charge (R. 742a), in motions for directed verdict (R. 713a), and in the motion for a new trial (R. 77a-81a).

[12] The verdict for $76,504.21 was placed in the judgment (R. 76a) as $76,504.26.

half by UMW and District 28, "for which execution may issue, unless said costs are paid" (R. 76a). Unions noted their exceptions to the trial court's jury charge (R. 738a-42a). Motion for a new trial was denied petitioners (R. 77a, 86a).[13]

Upon appeal, the Sixth Circuit, regarding as a basic issue the inquiry "Did any or all of the strikes in question violate the agreement of 1950-52 . . . if they were caused by the Unions?" (R. 764), concluded that "a strike to settle a dispute which a collective bargaining agreement provides shall be settled by an exclusive and obligatory alternative procedure constitutes a violation of the agreement" (R. 766; 259 F. 2d 351).[14] Affirming the jury verdict and the district court on the issue of the Unions' liability to Benedict, by judgment entered September 26, 1958, it set aside the trial court's judgment because of errors "affecting the amount of damages Benedict was entitled to recover from the Unions" and remanded the case "solely for a redetermination . . . of the amount of damages" Benedict is entitled to recover against UMW and District 28 (R. 774, 761).

2. THE FACTS

a. The Alleged Strike Activity and the Sixth Circuit's Holdings Relative Thereto

Benedict grounded the Unions' responsibility upon eleven alleged strikes. As to two, the Sixth Circuit held the evidence insufficient to show the stoppages

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[13] Petitioners' assigned grounds to set aside the jury verdict, to vacate judgment entered thereon, and for a new trial appear in the printed record beginning on page 77a.

[14] While other issues were presented in Unions' petition for certiorari, this Court limited the granting of the writ to the issue of whether the strikes were violative of the 1950 Agreement.

"were concerted strikes resulting from a labor dispute"; that they were "clearly spontaneous" and therefore "did not constitute violations of the 1950-52 agreement" (R. 767). It likewise excluded a third strike because of its being "national in scope, [the] dispute was not under the agreement subject to settlement on the local or district level" (R. 767). As to the remaining eight strikes, the dates and characterization of which are set forth below,[15] the Sixth Circuit held "the evidence was sufficient to support the jury's determination that they resulted from localized labor disputes which were cognizable under the settlement procedure provided by the agreement"[16] (R. 767), rejecting the Unions' contentions that neither UMW nor District 28 authorized, called, participated in or ratified any of said strikes. In each of said strike situations when District 28 representatives were called concerning the respective disputes which occasioned the stoppages, the grievances were settled and the miners returned to work (R. 567a-9a, 604a; R. 166a,

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[15] The dates and characterization of the eight strikes are as follows:

1950—April 14 and 17,	the seniority strike;
1951—July 30-31,	the vacation pay strike;
1951—October 1-8,	the credit strike;
1951—November 2, 7,	the Ernest Tabor discharge strike;
1952—February 7-8, April 24-25,	the M. M. Campbell strikes;
1952—August 5-6,	the Anders-Roark discharge strike;
1953—May 18-19,	the Big Mountain Coal Co. strike.

[16] Benedict contended in its complaint that two of the strikes were violative of the Act's Section 303 (29 USCA 187). The Sixth Circuit, having found the evidence sufficient to support the jury's determination that the eight strikes were cognizable under the settlement procedure provided by the Agreement, found it "unnecessary to consider whether two of these strikes also violated the Labor Management Relations Act of 1947" (R. 767, fn. 6).

168a, 275a, 281a, 578a-9a; R. 282a-3a, 170a, 580a; R. 171a-3a, 616a; R. 577a, 583a-5a; R. 173a-4a, 636a-9a, 644a-5a; R. 199a, 314a, 588a-90a, 658a-60a, 670a-1a).

b. The Collective Bargaining History and the 1950 Agreement

The Sixth Circuit's agreement with Benedict's assertion that the strikes violated the agreements necessitates examination of pertinent provisions thereof and the collective bargaining history antecedent thereto reflecting the meaning of such provisions.

Collective Bargaining Agreements Antedating 1947 Contained Waivers of the Right to Strike.

Collective bargaining agreements in the bituminous coal industry, antedating 1947, contained specific waivers of coal miners' right to strike.

The Southern Wage Agreement of 1941 (Ex. 14, R. 122a, 247a) mandated that:

> "*Pending the hearing of disputes, the Mine Workers shall not cease work because of any dispute*" (R. 124a)[17]

and that

> "*A strike or stoppage of work on the part of the Mine Workers shall be a violation of this Agreement*" (R. 125a)

and that

> "*Under no circumstances shall the Operator discuss the matter under dispute with the Mine Committee or any representative of the United Mine Workers of America during suspension of work in violation of this Agreement*" (R. 125a).

[17] All emphases used in this brief are supplied.

Likewise, the 1945 Agreement declared that

> "*For the duration of this Agreement no strikes shall be called or maintained hereunder.*"[18]

The 1947 and 1948 Agreements Rescinded the No-Strike Clauses.

On June 23, 1947, Congress enacted the Taft-Hartley Act, subjecting labor organizations, among other matters, to money judgments derived from actions authorized under Section 301 for breach of contract.[19] With such statutory sanctions confronting UMW and its affiliates, the 1947 Agreement, made July 7 of that year, effective July 1, 1947 to June 30, 1948, and executed July 8, 1947 (Ex. 15, R. 126a, 248a), provided that:

> "this Agreement . . . shall cover the employment of persons employed in the bituminous coal mines covered by this Agreement during such time as such persons are *able and willing to work.*" (R. 127a).

It omitted the "no-strike" and related covenants of the 1941 and 1945 Agreements; and by affirmative recitals made it positive that a strike or work stoppage was no longer a violation of the collective bargaining agreement. In the 1947 Agreement the contracting signatories, in a section styled "Miscellaneous", expressly agreed that the prior no-strike clauses were "*rescinded, cancelled, abrogated and made null and void.*" Sub-

[18] The 1945 Agreement, admitted in evidence (Ex. 11, R. 120a, 244a), appears, in part, in the printed record at pages 120a-121a, but the quoted language in the text above found in Section 13 of that Agreement was inadvertently omitted. It is printed in Appendix II, *post*, p. 31.

[19] The Act likewise subjected labor organizations to injunction sanctions based upon unfair labor practices and to money judgments in actions under Section 303 for violations of secondary boycott prohibitions found in Section 8(b)(4) of the Act.

section 1 of the "Miscellaneous" section read thus (R. 129a):

> "Any and all provisions in either the Appalachian Joint Wage Agreement of June 19, 1941, or the National Bituminous Coal Wage Agreement of April 11, 1945, containing any 'no strike' or 'Penalty' clause or clauses or any clause denominated 'Illegal Suspension of Work' are hereby rescinded, cancelled, abrogated and made null and void."[20]

In the same section, subsection 3 provided that (R. 129a):

> "The contracting parties agree that, as a part of the consideration of this contract, any and all disputes, stoppages, suspensions of work and any and all claims, demands or actions growing therefrom or involved therein shall be by the contracting parties settled and determined exclusively by the machinery provided in the Settlement of Local and District Disputes" section of this Agreement; or, if national in character, by the full use of free collective bargaining as heretofore known and practiced in the industry."

The 1948 Agreement carried forward the 1947 Agreement and terminated by its own terms on June 30, 1949 (Ex. 15, R. 126a, 248a).

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[20] In the 1947 Agreement a section styled "District Agreements" provided that (R. 127a):

> ". . . any provisions in District or Local Agreements providing for the levying, assessing or collecting of fines or providing for 'no strike,' 'indemnity' or 'guarantee' clauses or provisions are hereby expressly repealed and shall not be applicable during the term of this Agreement . . ."

The 1950 Agreement Continued the Repeal of the No-Strike Clauses of the Earlier Contracts.

By specific recitals in the 1950 Agreement, terms of certain antecedent agreements in the bituminous coal industry were carried forward, subject to the terms and conditions of the 1950 Agreement (Ex. 2, R. 88a, 154a);[21] but it expressly continued the repeal and cancellation of the no-strike and related clauses of the 1941 and 1945 Agreements (Ex. 2, R. 106a).

Whereas the 1941 Agreement's "Settlement of Disputes" section commanded that "Pending the hearing of disputes, the Mine Workers shall not cease work because of any dispute" (R. 124a), and "there shall be no suspension of work on account of" disputes (R. 124a), no such proscription against stoppages is found in the corresponding disputes section of the 1950 Agreement.[22] The proscription against coal operators' ne-

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[21] These were:

(a) the Appalachian Joint Wage Agreement of 1941 (R. 122a),
(2) the Supplemental Six-Day Work Week Agreement,
(3) the National Bituminous Coal Wage Agreement of 1945 (R. 120a), and
(4) all various District Agreements based upon the aforesaid basic Agreements as such district agreements existed on March 31, 1946—but all "subject to the terms and conditions of the 1950 Agreement and as amended, modified and supplemented" thereby.

[22] The 1950 Agreement's "Settlement of Local and District Disputes" section reads in part thus (R. 104a):

"Should differences arise between the Mine Workers and the Operators as to the meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences immediately:

"1. Between the aggrieved party and the mine management.

gotiating the dispute, found in the 1941 Agreement (*ante*, p. 8), was also omitted from the 1950 Agreement. *These manifestly pertinent changes were completely ignored by the Sixth Circuit.* Moreover, the other limitations upon the right to strike contained in the 1941 and 1945 Agreements, which were first rescinded in the 1947 Agreement, were likewise cancelled under the 1950 Agreement's terms. The precise language of subsections 1 and 3 of the "Miscellaneous" section of the 1947 Agreement (*ante*, p. 10) was placed in the 1950 Agreement. The 1950 Agreement, thus recognizing the right to strike,[23] also provided in sub-

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"2. Through the management of the mine and the Mine Committee.

"3. Through District representatives of the United Mine Workers of America and a commissioner representative (where employed) of the coal company.

"4. By a board consisting of four members, two of whom shall be designated by the Mine Workers and two by the Operators.

"5. Should the board fail to agree the matter shall, within thirty (30) days after decision by the board, be referred to an umpire to be mutually agreed upon by the Operator or Operators affected and by the duly designated representatives of the United Mine Workers of America, and the umpire so agreed upon shall expeditiously and without delay decide said case. The decision of the umpire shall be final. Expenses and salary incident to the services of an umpire shall be paid equally by the Operator or Operators affected and by the Mine Workers."

[23] The 1950 Agreement, under the subheading "Miscellaneous", paragraph 1, reads (R. 106a):

"1. Any and all provisions in either the Appalachian Joint Wage Agreement of June 19, 1941, or the National Bituminous Coal Wage Agreement of April 11, 1945, containing any 'no strike' or 'Penalty' clause or clauses or any clause denominated 'Illegal Suspension of Work' are hereby rescinded, cancelled, abrogated and made null and void."

section 4 of "Miscellaneous" that UMW and the Operators affirmed

> "their intention to maintain the integrity of this contract and to exercise their best efforts through available disciplinary measures to prevent stoppages of work by strike or lockout pending adjustment or adjudication of disputes and grievances in the manner provided in this agreement" (R. 106a).[24]

The 1950 Agreement contained no express waiver or limitation of the right to strike.

3. THE SIXTH CIRCUIT'S CONCLUSION THAT STRIKE ACTIVITY VIOLATED THE 1950 AGREEMENT

Though the Sixth Circuit agreed that "the agreement expressly stated that the 'no strike' provisions of the previous contracts were superseded" (R. 764) and that "the right to strike . . . was expressly preserved in the 1950-52 agreement" (R. 766), it declared that determination of whether the strikes violated such agreement "depends upon what effect the agreement to settle all local disputes in accordance with the 'Settlement of Local and District Disputes' procedure had upon the right to strike" (R. 766), and it concluded that "a strike to settle a dispute which a collective bargaining agreement provides shall be settled by an exclusive and obligatory alternative procedure constitutes a violation of the agreement". (R. 766). It reasoned that its conclusion "does not make meaningless the express abrogation of a no strike clause in the 1950-52 agreement" (R. 766); that the "right to strike was preserved with respect to all disputes not subject

[24] The foregoing provisions of the 1950 Agreement were carried forward into the 1951 Agreement, which became effective February 1, 1951 (Ex. 10, R. 118a, 241a).

to settlement by other methods made exclusive by the agreement" (R. 766-7); and though professing that "the Unions remained free from liability for spontaneous or 'wildcat' strikes" (R. 767), defined by that Court as "the kind of 'stoppages' and 'suspension of work' which the agreement made subject to the settlement procedure therein provided" (R. 767), it concluded that the strikes "resulted from localized labor disputes which were cognizable under the settlement procedure" (R. 767).

ARGUMENT

I. Strike Activity Pending Settlement of Disputes Under the Grievance Machinery of the 1950 Agreement was a Permissive, and Not a Prohibited, Activity Thereunder and Did Not Subject the Unions to a Damage Action Under Section 301 of the Act. The Sixth Circuit's Conclusion to the Contrary Is Unwarranted Under the Evidence and Applicable Law

The Unions contend now, as they did in the trial court and the Sixth Circuit, that the strike activity was not in violation of the 1950 Agreement and did not subject them to a damage action under the Act's Section 301.

Significantly, the Sixth Circuit admitted that the no-strike provisions in contracts antedating the 1950 Agreement "were superseded" and that the "right to strike" was "expressly preserved in the 1950-52 Agreement" (R. 764, 766); yet totally inconsonant therewith is the Sixth Circuit's antithetical conclusion that "a strike to settle a dispute which a collective bargaining agreement provides shall be settled by an exclusive and obligatory alternative procedure constitutes a violation of the agreement" (R. 766). Thus, the Sixth Circuit holds that pending settlement of a dispute there shall be no strike or work stoppage, thus negating

the very right to strike which it declared the contracting parties agreed had been preserved (R. 766) and thereby replacing into the Agreements the precise wording, namely, that "Pending the hearing of disputes, the Mine Workers shall not cease work . . .", which the contracting parties expressly covenanted had been "*rescinded, cancelled, abbrogated and made null and void*". To the Sixth Circuit, the determination of the issue of contract violation "depends upon what effect the agreement to settle all local disputes in accordance with the 'Settlement of Local and District Disputes' procedure had upon the right to strike which was expressly preserved in the 1950-52 agreement" (R. 766).

The fallacy of the Sixth Circuit's conclusion is made manifest by the bargaining history between the 1950 Agreement's signatories, which was appropriately regarded as "enlightening" by the District of Columbia Circuit in *International Union, UMWA* v. *National Labor Relations Board,* DC Cir., 257 F. 2d 211 (1958), when it held that the provision that disputes should be settled by grievance and arbitration procedures was not a binding agreement not to strike.

The Court will recall that the 1941 and 1945 Agreements, *in the settlement of disputes section,* committed miners to the covenant that "Pending the hearing of disputes, the Mine Workers shall not cease work because of any dispute" (*ante;* p. 8). It was at this posture in the bituminous coal industry's collective bargaining history that Congress enacted the Taft-Hartley Act on June 23, 1947, subjecting labor unions to various sanctions, including money judgments for breaches of contract as authorized by the Act's Section 301.

It had long been the judicial view that it was the employees' right to withhold their services and engage in work stoppages or strikes which gave to labor the necessary equality in the collective bargaining process. *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184; and it had also been this Court's teaching that employees "can sell . . . their labor . . . upon such terms and conditions as they choose". *Hunt* v. *Crumboch*, 325 U. S. 821, 824. Congressional recognition of these employee rights are found in the Act's Section 7, while Section 13 commands that the right to strike is not restricted or waived except as Congress has "specifically provided" in the Act (see Appendix I, p. 29 and *post*, p. 21). Even though the collective bargaining scheme of Taft-Hartley seeks to reduce strikes and industrial unrest, its legislative history supports the position that the right to strike was preserved[25] and that whether a labor union and its members waived or limited the right to engage in a strike and what sanctions, if any, were to be imposed for the breach of any obligations agreed upon, remain appropriate subjects for free collective bargaining.[26] Faced with the damage actions sanctioned by Section

[25] *NLRB* v. *International Rice Milling Co.*, 341 U. S. 665, 673, fn. 8, quotes Senator Taft (93 Cong. Rec. 3835):

> "So far as the bill is concerned, we have proceeded on the theory that there is a right to strike and that labor peace must be based on free collective bargaining."

[26] In considering the question of enforcement of collective bargaining contracts against labor organizations, argument was advanced that such responsibility would result in labor's refusal to consent to inclusion of no-strike clauses in contracts but such an argument was rejected by the Senate Committee by declaring that inclusion of "no-strike" clauses in agreements "is certainly a point to be bargained over". Senate Report No. 105, 80th Cong., 1st Session, pp. 17-18.

301, UMW was no longer willing that the "no strike" and kindred clauses remain in the collective agreement. Hence, as a result of collective bargaining, the contracting coal operators and UMW signatories to the 1947 Agreement, bearing a July 7, 1947 date, agreed that it "shall cover the employment of persons employed in the bituminous coal mines covered by this Agreement during such time as such persons are *able and willing to work*" (R. 127a), and, omitting the no-strike and related clauses of the 1941 and 1945 Agreements, *by affirmative recitals,* made it positive that a strike or work stoppage was no longer a violation of the collective bargaining agreement. The 1947 Agreement expressly provided that (R. 129a):

> "1. Any and all provisions in either the Appalachian Joint Wage Agreement of June 19, 1941, or the National Bituminous Coal Wage Agreement of April 11, 1945, containing *any 'no strike' or 'Penalty' clause or clauses or any clause denominated 'Illegal Suspension of Work' are hereby rescinded, cancelled, abrogated and made null and void*",

and that likewise all District or Local Agreements providing for no-strike and related clauses were also "expressly repealed" and rendered inapplicable during the Agreement's term (R. 127a). By such affirmative recitals the Unions were exculpated from all legal responsibility for strikes by the assurance that such activity no longer could be regarded as breach of contract strikes. The 1947 Agreement, as shown herein (*ante,* p. 10), also provided that "stoppages . . . shall be . . . settled and determined exclusively by the" grievance machinery provisions. As the District of Columbia Circuit declared in the *International Union, UMWA* case (257 F. 2d 211, 216), rescission in the 1947

Agreement of the no-strike and related clauses "was done to remove the danger that the union might be sued for breach of contract under the new statute".

As already noted, the 1948 Agreement (R. 126a, 248a) carried forward the 1947 Agreement and terminated by its own terms on June 30, 1949; and there is judicial recording that, upon expiration of the 1948 contract, UMW was enjoined by court decree from insisting upon inclusion of the "able and willing" clause in an agreement successor to the 1948 Agreement. *Penello* v. *International Union, UMWA*, DC, D.C., February 9, 1950, 88 F. Supp. 935, 942. That the "able and willing" clause was wholly separate from and "had no connection with the problem of 'no strike' and 'no stoppage' clauses" is affirmed by the District of Columbia Circuit in its *International Union, UMWA* case (257 F. 2d 211, 216), wherein it observed that:

> "The Operators Negotiating Committee in 1950, in a letter written to Mr. Lewis in the course of the negotiations of the 1950 contract, demanded under heading (3) *no strike or stoppage clauses*, and under heading (4) the elimination of the 'able and willing' clause."

Thus, the 1950 contract, although eliminating the "able and willing" clause, expressly provided, in the precise language of the 1947 contract, for the rescission of all no-strike and related clauses. Subsections 1 and 3 of the "Miscellaneous" section of the 1950 Agreement (R. 106a) are in the same wording as they appeared in the 1947 Agreement (as quoted, *ante*, p. 10). Likewise, both the 1947 (R. 127a) and the 1950 (R. 104a) Agreements provide that

> "any provision in District or Local Agreements providing for the levying, assessing or collecting

> of fines or providing for 'no strike,' 'indemnity' or 'guarantee' clauses or provisions are hereby expressly repealed and shall not be applicable during the term of this Agreement."

The 1950 Agreement also contained subsection 4 of the article "Miscellaneous", which read (R. 106a):

> "4. The United Mine Workers of America and the Operators signatory hereto affirm their intention to maintain the integrity of this contract and to exercise their best efforts through available disciplinary measures to prevent stoppages of work by strike or lockout pending adjustment or adjudication of disputes and grievances in the manner provided in this agreement."

In light of the Sixth Circuit's admission that the no-strike provisions in contracts antedating the 1950 Agreement "were superseded" and the right to strike "expressly preserved in the 1950-52 Agreement", its contradictory holding that pending settlement of a dispute there should be no strike, can be explained only by the specious argument that having expressly rescinded the previous no-strike provisions in subsection 1, the parties reinstated them in subsection 3.

Unless clear, positive and unequivocal language has lost its meaning, the contracting parties could not have in more definitive and unambiguous verbiage expressed their understanding and intent that the right to strike, proscribed by earlier contracts, was no longer waived but was reinstated. If the contracting parties intended that there should be no work stoppages pending settlement of disputes under the grievance machinery procedures, why should they have so studiously provided for rescission of such clauses and that they "should not be applicable"? It is both absurd and untenable

to argue that the contracting parties would in such positive and unequivocal wording have eliminated the no-strike provision and then in the same instrument intend, by implication, to reinstate it; but such is the Sixth Circuit's result. Since, as the District of Columbia Circuit professed in its decision interpreting the Agreement's language, subsection 1 was put into the 1947 Agreement (and later in the 1950 Agreement) "to remove the danger that the union might be sued for breach of contract under the new statute" (257 F. 2d 216), the result of the Sixth Circuit's conclusion is to render UMW's purpose in insulating it and its affiliates from damage actions under Section 301, as well as the contract's language, as meaningless and a nullity.

In its decision, the District of Columbia Circuit, in the *International Union, UMWA* case (257 F. 2d 211), pointed out that the no-strike provisions of the 1941 and 1945 Agreements were rescinded "in subsection 1 because of the danger of lawsuits under the Taft-Hartley Act", and cogently inquired that "If they reinstated them in subsection 3, would the lawsuits be any less annoying or perilous to the union treasury?" (257 F. 2d 217). The District of Columbia Circuit appropriately rationalized that (257 F. 2d 217):

> "It is hardly conceivable that a stoppage of work could occur except as a consequence of a dispute which would be cognizable under the grievance procedure of the contract",

and

> "That being so, what was eliminated unequivocally in subsection 1 was restored completely in subsection 3, if subsection 3 was a 'no strike' agreement".

Finalizing its rejection of argument paralleling that employed by Benedict and the Sixth Circuit herein, the District of Columbia declared that (257 F. 2d 217):

> "If we are to credit the parties with normal capacity to reason and express themselves, we cannot read subsection 3 as a 'no strike' agreement."[27]

The Sixth Circuit's holding is inconsonant with this Court's declaration in *NLRB* v. *Lion Oil Co.*, 352 U. S. 282, 293 (1957) that:

> "Where there has been no express waiver of the right to strike, a waiver of the right during such period is not to be inferred."

It is noteworthy that in the Act's Section 13 is found the Congressional command that:

> "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike".

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[27] Despite its contrary view argued in *International Union, UMWA* v. *National Labor Relations Board, supra*, which was rejected by the District of Columbia Circuit, the Board's holding prior thereto had constantly been that the renunciation of the right to strike "will not be found to exist *except when expressed in clear and unequivocal language*". *Textron Puerto Rico*, 107 NLRB 583, 587; *Consolidated Frame Co.*, 91 NLRB 1295, 1297; *California Portland Cement Co.*, 101 NLRB 1436, 1439.

Former Board Chairman Herzog in *National Electric Products Corp.*, 80 NLRB 995, stated:

> "*In the absence of an express provision to that effect, I do not see how such a clause can also be taken to disclose an intention by either party to include a pledge never to use self-help* in the event of a serious violation of law by the other. *If a contract does not preclude self-help in such circumstances, its use cannot constitute a breach of that contract . . .*"

The foregoing statement was quoted with approval in the Intermediate Report in *Mastro Plastics Corp.*, 103 NLRB 511, 557.

Of Section 13 the District of Columbia Circuit declared in the *International Union, UMWA* case, *supra*, that:

> "This section forbids a free interpretation of the Act itself in such a way as to find in it implicit inhibitions of the right to strike. It seems to us that the spirit of the section also is an admonition to deciding tribunals not to interpret ambiguous provisions of contracts as amounting to 'no strike' agreements." (257 F. 2d 218).

Further, the Sixth Circuit's result ignores completely the contract fact that "stoppages", as well as disputes, were to be settled under the grievance procedures. The contracting parties in subsection 3 manifested obvious recognition that stoppages would occur. It is significant that whereas the 1941 Agreement had expressly provided, in connection with the no-strike clause, that "Under no circumstances shall the Operator discuss the matter under dispute with the Mine Committee or any representative of the United Mine Workers of America during suspension of work in violation of this Agreement," the 1950 Agreement contained no such restriction, thus showing that when the contracting parties agreed that the right to strike was restored, they agreed further that pending strike activity the parties would negotiate settlement of matters in dispute.

With the contractual proscriptions against striking excluded, the right to strike, as the Sixth Circuit declared, was contractually preserved and recognized. In light of such declaration, to adopt the Sixth Circuit's further view that strike activity was violative of the agreement because of the language of subsection 3 would impose upon the Operators, and in the instant case upon Benedict, an intent to delude and defraud

the employees. Clearly an employee reading that the no-strike and related clauses had been deleted could conclude only that his right to strike had been restored. It is one thing to agree to process disputes under the grievance machinery, which was done in the instant case. It is an entirely different matter to say thereby there is agreement not to resort to a stoppage pending the dispute's settlement.

In *Colgate-Palmolive-Peet Co. v. NLRB*, 338 U. S. 355, 363, this Court rejected an attempted "reform" of a collective bargaining agreement "to conform to" a tribunal's "idea of correct policy" and admonished against the emasculation of the agreement of contracting parties by ignoring "plain provisions of a valid contract". Application of such principle demonstrates fully the Sixth Circuit's error. The Sixth Circuit's conclusion finds challenge, too, in the principle that denies to a court the right to imply terms which "are inconsistent with express provisions". 12 Am. Jur., Contracts, Section 239, pp. 767-8; *Ferroline Corp. v. General Aniline & Film Corp.*, 7 Cir., 207 F. 2d 912, 926. Aptly stated are the words of Mr. Justice Cardozo in *Marchant v. Mead-Morrison Mfg. Co.*, 252 N. Y. 284, 169 N. E. 386, 391, 393:

> "Courts are not at liberty to shirk the process of construction under the empire of a belief that arbitration is beneficient . . . No one is under a duty to resort to these conventional tribunals . . . except to the extent he has signified his willingness . . . [Contracting parties] . . . are not to be trapped by a strained and unnatural construction of words of doubtful import into an abandonment of legal remedies, unwilled and unforeseen."

To adopt the Sixth Circuit's distortion of the contracting parties' agreement would not be conducive

to the elimination of strike activity, but instead, would be invitatory to labor unions to withdraw from collective bargaining agreements provisions for settlement of disputes through grievance procedures.

The Sixth Circuit noted the inconsonancy of its decision with that of the District of Columbia Circuit, but cast its preference with the view of the dissenting judge in *International Union, UMWA* v. *NLRB, supra*, and mistakingly with the Fourth Circuit's *United Construction Workers* v. *Haislip Baking Co.*, 4 Cir., 223 F. 2d 872; and the First Circuit's *W. L. Mead, Inc.* v. *International Brotherhood of Teamsters*, DC. Mass. (1954), 126 F. Supp. 466, aff'd. 230 F. 2d 576 (R. 766).

When, in the instant case, the Sixth Circuit cast its agreement "with the dissenting judge in" the District of Columbia case, it necessarily approved the reasoning employed in the dissent (257 F. 2d 218) that the strike constituted "pressure tactics" which were "in violation of *express* contract provisions" (257 F. 2d 220)—reasoning which is not only contrary to the bargaining history of the 1950-52 contracts and to the specific language thereof, but reflects also the dissenting judge's total lack of familiarity with or concern for the Congressionally-declared policy that the right to strike shall be a subject for collective bargaining, that the Act's legislative history supports the view that the right to strike was preserved and so recognized by this Court in *NLRB* v. *International Rice Milling Co.*, 341 U. S. 665, 673, and this Court's standard expressed in *NLRB* v. *Lion Oil Co.*, that

> "Where there has been no express waiver of the right to strike, a waiver of the right during such period is not to be inferred."

Furthermore, the unsoundness of the dissenting opinion—which the Sixth Circuit has adopted—is plenarily demonstrated in its statement that

> ". . . the presence or absence of a 'no strike' clause is beside the point." (257 F. 2d 219).

The Sixth Circuit's agreement with the dissent, adopting its fallacies and infirmities, thus of necessity renders and stamps the Sixth Circuit's conclusion as tainted, untenable and clearly erroneous.

The District of Columbia Circuit appraised the *Haislip* and *Mead* cases as "expressions which support the Board's preference" (257 F. 2d 217), but declared that:

> "Such a preference is, however, no justification for, by the process of benevolent interpretation, making a contract for the parties which, to a moral certainty, they did not make for themselves." (257 F. 2d 217-8).

Such reasoning, Unions submit, is likewise apposite to the Sixth Circuit's conclusion herein.

The Sixth Circuit's use of the *Haislip* and *Mead* cases in support of its conclusion is totally abortive. Neither *Mead* nor *Haislip* contained positive covenants, as does the 1950 Agreement, that prior no-strike clauses are rescinded and made null and void; they contained only arbitration procedure provisions; and it is noteworthy that in *Mead* the District Court's opinion declares that:

> "An arbitration clause is not the same thing as a 'no strike' clause, and cannot . . . have such broad consequences." (126 F. Supp. 467).

and that there was no testimony "that the Union specifically wanted to protect its right to strike" (126 F. Supp. 469).

Previous to its holding in the instant case, the Sixth Circuit had concerned itself, in *Garmeada Coal Co.* v. *International Union, UMWA*, 6 Cir., 230 F. 2d 945, in a damage action against UMW, a local union and a district, with the right to strike under the same 1950 Agreement involved in the instant case; and it sanctioned the District Court's reasoning that therein the miners were "*pursuing their right to strike regardless of the provisions of the*" Agreement. (DC, E.D. Ky., 1954, 122 F. Supp. 512, 518) When it is considered that the trial court in *Garmeada* incorporated in its decision the "Settlement of Local and District Disputes" section of the 1950 Agreement, the conflict between the Sixth Circuit's conclusion herein and its approval of the District Court's reasoning in *Garmeada* is readily apparent.

The Sixth Circuit seeks to justify its holding by contending that its conclusion "does not make meaningless the express abrogation of a no strike clause in the 1950-52 agreement" and that the "right to strike was preserved with respect to all disputes not subject to settlement by other methods made exclusive by the agreement", noting that "spontaneous or 'wildcat' strikes . . . would be the kind of 'stoppages' and 'suspensions of work which the agreement made subject to the settlement procedure therein provided" (R. 766-7). But it is noteworthy that when the contracting parties in the 1950-52 Agreements rescinded and made inapplicable and null and void the no-strike clauses of earlier contracts, they preserved the right to strike totally and unequivocally. They did not, as the Sixth Circuit erroneously and untenably reasoned,

agree that the right to strike was preserved *only* "with respect to all disputes not subject to settlement by other methods made exclusive by the agreement". The declaration of the *partial* preservation of the right to strike is the result of the Sixth Circuit's reformation of the contract; it is in total conflict with the understanding and intent of the contracting parties signatory to the 1950 contract and therein expressed in positive and unequivocal language; and it offends the rule already noted that courts, like administrative tribunals, "cannot ignore the plain provisions of a valid contract" (*Colgate-Palmolive-Peet Co.* v. *NLRB*, 338 U. S. 355, 363).

The Sixth Circuit's holding and decision that strike activity constituted a violation of the 1950 Agreement are unwarranted under the evidence and applicable law.

CONCLUSION

For the foregoing reasons, the Unions (Petitioners) submit that this Court should answer the Question Presented (*ante*, p. 3) in the negative, reverse the Court of Appeals' holding that the strikes constituted violations of the 1950 Agreement, and reverse and set aside the Court of Appeals' judgment of September 26, 1958, in so far as said judgment provides that "the case is remanded solely for a redetermination in accordance with the views expressed in the opinion [of the Sixth Circuit], of the amount of damages" Benedict is entitled to recover from Petitioners, and enter judgment for the Unions, and each

of them, or, in the alternative, remand the case for entry of judgment in accordance with this Court's determination of the question of law involved.

Respectfully submitted,

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APPENDIX I

Labor Management Relations Act, 1947, Section 7 (29 USCA 157):

Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

Labor Management Relations Act, 1947, Section 13 (29 USCA 163):

Right to strike preserved

Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

Labor Management Relations Act, 1947, Section 301 (29 USCA 185):

Suits by and against labor organizations—Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States

having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

APPENDIX II

"National Bituminous Coal Wage Agreement
Effective April 1, 1945

• • • •

"13. • • •

For the duration of this Agreement no strikes shall be called or maintained hereunder."